

Message

From: Matten, Sharlene [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8E6D27A895D044F6BEDA49908859BFFF-SHARLENE R. MATTEN]
Sent: 2/20/2020 3:38:53 PM
To: Mosley, Ferne [mosley.ferne@epa.gov]
CC: Hughes, Hayley [hughes.hayley@epa.gov]
Subject: RE: Witness Testimony -- added more particulars - with one follow-up

Hi Ferne, Hope that you are feeling better. Thank you!
Sharlene

Sharlene R. Matten, Ph.D.
Senior Biologist
Office of Science Coordination and Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington D.C. 20460
e-mail: matten.sharlene@epa.gov
Tel: 202-564-0130
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From: Mosley, Ferne <mosley.ferne@epa.gov>
Sent: Thursday, February 20, 2020 10:36 AM
To: Matten, Sharlene <Matten.Sharlene@epa.gov>
Cc: Hughes, Hayley <hughes.hayley@epa.gov>
Subject: RE: Witness Testimony -- added more particulars - with one follow-up

While he is an SGE, he can't be an expert witness in federal court on behalf of anyone other than the United States if the court case involves a matter pending at EPA.

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building – North, Room 4413A
Washington, DC 20460 (for ground deliveries: 20004)
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Desk phone: (202) 564-8046
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From: Matten, Sharlene <Matten.Sharlene@epa.gov>
Sent: Wednesday, February 19, 2020 6:27 PM
To: Mosley, Ferne <mosley.ferne@epa.gov>
Cc: Hughes, Hayley <hughes.hayley@epa.gov>
Subject: Re: Witness Testimony -- added more particulars - with one follow-up

This helps a lot! So if he were to be selected, he would not be able to give expert testimony on behalf of any product manufacturers using asbestos while he is working for the EPA on this particular matter from selection until the report is issued?

Let me know, this is a person who would be serving on a panel at the end of April. We have hired him.

Thanks, Sharlene

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On Feb 19, 2020, at 5:35 PM, Mosley, Ferne <mosley.ferne@epa.gov> wrote:

Thanks for the context – he will have a “covered relationship” with any entity in which he served as a consultant within the last year. See 5 C.F.R. 2635.502(b)(1)(iv). However, the impartiality regulations govern his participation in specific party matters, not matters of general applicability. His continuing financial interests apply to both specific party matters and matters of general applicability. Absent a “covered relationship,” you can always consider general bias he may have and balance issues under FACA, but technically, he does not have an ethics issue that will prevent him from working on the charge absent a continuing financial interest and current consulting contracts with the manufacturers.

He cannot serve as an expert witness in federal court in a case involving the EPA during the time he is serving as an EPA SGE.

Ferne L. Mosley, Attorney-Advisor

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From: Matten, Sharlene <Matten.Sharlene@epa.gov>

Sent: Wednesday, February 19, 2020 5:13 PM

To: Mosley, Ferne <mosley.ferne@epa.gov>; Hughes, Hayley <hughes.hayley@epa.gov>

Subject: RE: Witness Testimony -- added more particulars

Hi Ferne,

I'll give you more particulars...

1. The particular matter of general applicability relates to the draft risk evaluation for asbestos.
2. Individual has given expert testimony related to asbestos. See underlined portion below – he is representing manufacturers or organizations who use/produce asbestos-containing products in automobile brakes, electrical equipment, boilers, etc. According to EPA data, there are only two manufacturers in the U.S., most uses of asbestos were banned by EPA many years ago.

“My expert witness testimony centers on epidemiology and occupational medicine in relation to asbestos. I educate juries about general causation questions (asbestos and cancer) and, when asked,

specific causation (did asbestos contribute to this person's cancer?), including medical course. The defendants in the past 1.5 years have been Mole Richardson and Strand Cos, (they made stage lights), Port Authority of NY/NJ, and Tishman Realty. Other defendant companies in the past 2-3 years are pump, valve, electrical equipment, and boiler manufacturers and auto or brake manufacturers."

3. Dr. Markowitz is currently being hired as an SGE – for asbestos issues, but also other chemical issues.

4. Dr. Markowitz has represented companies/manufacturers of asbestos-containing products – discussing the linkage between exposure to the asbestos-containing product and cancer.

Questions for Ferne:

1. He does not have an ownership interest (stocks, assets, contracts, etc. and no income) in any asbestos manufacturers. There would appear to be no financial conflict of interest. With TSCA, the focus is on the manufacturers, not on the downstream consumer products. What is your analysis?

2. Does he lack the appearance of impartiality with respect to the charge – evaluation of the Agency's draft risk evaluation of asbestos? Without looking at his actual testimony...it is difficult to assess. If we were to use the catch-all "reasonable person" scenario – one could argue his testimony demonstrates a lack of impartiality with respect to the evaluation of the cancer risk caused by asbestos. If there is discretion then, multiple experts could be selected for balance. Please advise.

3. Will Dr. Markowitz have to stop being an expert witness on asbestos (causation of asbestos and cancer) – if he is selected to participate as an SGE for the TSCA SACC?

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From: Mosley, Ferne <mosley.ferne@epa.gov>
Sent: Wednesday, February 19, 2020 4:40 PM
To: Hughes, Hayley <hughes.hayley@epa.gov>; Matten, Sharlene <Matten.Sharlene@epa.gov>
Subject: RE: 2 ethics issues to discuss with you today --- meeting invite sent for 2:30 - 3:00 pm today! - Hayley's Office

Here is the rule regarding service as an expert witness in federal court – for committees established by statute, e.g., the TSCA SACC, an SGE may not serve as an expert witness for someone other than the US in a matter pending at the EPA unless they get prior approval. See 5 CFR § 2635.805(b)(1).

<image001.png>

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From: Mosley, Ferne

Sent: Wednesday, February 19, 2020 4:21 PM

To: Hughes, Hayley <hughes.hayley@epa.gov>; Matten, Sharlene <Matten.Sharlene@epa.gov>

Subject: RE: 2 ethics issues to discuss with you today --- meeting invite sent for 2:30 - 3:00 pm today! - Hayley's Office

Thank you. I will let you know when I return.

Ferne L. Mosley, Attorney-Advisor

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From: Hughes, Hayley <hughes.hayley@epa.gov>

Sent: Wednesday, February 19, 2020 3:00 PM

To: Mosley, Ferne <mosley.ferne@epa.gov>; Matten, Sharlene <Matten.Sharlene@epa.gov>

Subject: RE: 2 ethics issues to discuss with you today --- meeting invite sent for 2:30 - 3:00 pm today! - Hayley's Office

Hi Ferne,

We hope you feel better soon. Just touch base when you can.

Thanks,
Hayley

Hayley Hughes, DrPH, MPH, CSP

Director, Office of Science Coordination and Policy

Office of Chemical Safety and Pollution Prevention

US Environmental Protection Agency

Desk: 202.564.1116

Email: Hughes.hayley@epa.gov

From: Mosley, Ferne <mosley.ferne@epa.gov>

Sent: Wednesday, February 19, 2020 2:40 PM

To: Matten, Sharlene <Matten.Sharlene@epa.gov>

Cc: Hughes, Hayley <hughes.hayley@epa.gov>

Subject: Re: 2 ethics issues to discuss with you today --- meeting invite sent for 2:30 - 3:00 pm today! - Hayley's Office

Hi I am sick today so I couldn't make it. Just seeing this. I may be in tomorrow and will let you know.
Ferne

Sent from my iPhone

On Feb 19, 2020, at 1:16 PM, Matten, Sharlene <Matten.Sharlene@epa.gov> wrote:

Two ethics issues:

1. Permanent member --- differentiating between his role as an independent advisory and his role as representative of a industry group.
2. Ad hoc member --- discussion of expert witness testimony in context of a particular matter ---- of general applicability – there are only 2 manufacturers in the U.S. – so wouldn't this be a specific party matter?

Thanks,
Sharlene

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